UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TWIN RIVERS PINE BLUFF LLC

and **Case 15-CA-268541**

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, LOCAL 13-935

Alexandra Schule, Esq.,
for the General Counsel.
Michael Billok, Esq. and
Nihla Sikkander, Esq.,
for the Respondent.
Sasha Shapiro, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

MELISSA M. OLIVERO, Administrative Law Judge. This case was tried using Zoom Government videoconferencing on April 20, 2021. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, Local 13–935 (Union or Local 13–935) filed the charge on November 2, 2020, and a first amended charge on January 11, 2021. (GC Exh. 1(a) and (c); Jt. Exh. 14.) The Acting General Counsel issued a complaint and notice of hearing on January 12, 2021. (GC Exh. 1(e).) Twin Rivers Pine Bluff LLC (Respondent) timely filed its answer on January 22, 2021, denying the relevant allegations. (GC Exh. 1(g)).) After considering all of the evidence and testimony presented, as well as the briefs of the parties, I find that Respondent violated the National Labor Relations Act (the Act) as alleged in the complaint.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, including my own observation of the demeanor of the witnesses,[1] and after carefully considering the briefs filed by the parties, I make the following

[1] Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather on my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom.

FINDINGS OF FACT

I. JURISDICTION

Twin Rivers Pine Bluff LLC (Respondent), a corporation, has been engaged in the manufacturing and distribution of paper products at its facility in Pine Bluff, Arkansas, where it annually sold and shipped from its Pine Bluff, Arkansas, facility goods valued in excess of $50,000 directly to points outside the State of Arkansas. In addition, Respondent purchased and received at its Pine Bluff, Arkansas facility, goods valued in excess of $50,000 directly from points outside the State of Arkansas. Respondent further performed services valued in excess of $50,000 in States other than the State of Arkansas. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(g).)

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Business and Labor Relations

Respondent operates a paper mill in Pine Bluff, Arkansas. (Tr. 24.) Approximately 189 employees work at this facility. (Tr. 112.) Theresa Rebman (f/k/a Theresa Van Meter)[2] serves as Respondent's human resources manager. (GC Exh. 1(g); Tr. 97.) Bill Ward is Respondent's operations manager. (GC Exh. 1(g).) Respondent admits, and I find, that Van Meter and Ward are supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act. (GC Exh. 1(g).) Furthermore, Respondent admits, and I find, that United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, Local 13–935 (Union or Local 13–935) is a labor organization within the meaning of Section 2(5) of the Act and has represented the following appropriate unit of its employees since 1965: All Production Employees.[3] (GC Exh. 1(g).)

Respondent and the Union have been parties to a series of collective-bargaining agreements over the years, the most recent of which is effective January 1, 2019, through December 31, 2022. (Jt. Exhs. 1, 14.) Article 7 of the collective-bargaining agreement, entitled Adjustment of Complaints, sets forth the parties' grievance-arbitration procedure. (Jt. Exh. 1, pp. 5–7.) Efforts are first to be made to settle the complaint informally and personally between the aggrieved employee and foreman. (Jt. Exh. 1, p. 6.) If the complaint is not settled informally, the aggrieved employee and/or his or her union steward present the complaint to the department superintendent and/or human resources manager. (Id.) The department superintendent and/or human resources manager meet with the union steward committee and then give a written answer to the complaint after the meeting. (Id.) If the answer is not satisfactory, the complaint may be

[2] Although Theresa Rebman currently uses this name, she is referred to throughout the record as Theresa Van Meter. Therefore, I shall refer to her as Van Meter in this decision.

[3] Respondent admitted that this is the appropriate unit of its employees represented by the Union in its answer. (GC Exh. 1(g).) However, I note that in the parties' current collective bargaining agreement, the unit is listed as, "all production and maintenance employees with the following exceptions: Office Clerical, Professional and Supervisor [sic] employees, Watchmen, and Guards, as defined by the National Labor Relations Act." (Jt. Exh. 1.)

referred to the mill manager. (Id.) The mill manager and/or his or her representative then meet with the union steward committee and the Union's International Representative. Respondent's operations director provides a written answer after the meeting. (Id.) If the Union is not satisfied with the answer of the operations director, the matter may be referred for final and binding arbitration. (Jt. Exh 1, pp. 6–7.)

Alonzo Ramey is an employee of Respondent and serves as the President of Local 13–935. (Tr. 24–25.) As local union president, Ramey upholds the terms of the parties' collective-bargaining agreement, addresses employees' concerns, and investigates, files, and processes grievances. (Tr. 39–40.) Chad Vincent is employed by the Unites Steelworkers International Union as a subdistrict director. (Tr. 85.) As such, he negotiates contracts, handles grievances, and administers contracts. (Tr. 85.)

B. Lime Kiln Scrubber Data Information Request

On May 11, 2020, Ramey sent a request for information to Van Meter by way of an email. (Jt. Exh. 2.) In his email, Ramey requested, "the kiln's differential pressure readings from November 1, 2019, to May 1, 2020." (Jt. Exh. 2.) In his request, Ramey stated that the Union, "has concerns about employees' exposure to NCGs [non-condensable gases] from the lime kiln." (Jt. Exh. 1.) The Union had learned from employee Donald Darrough that a supervisor had left differential pressure valves open on the lime kiln, causing the readings on the Material Safety Data Sheets (also referred to as the OSHA sheets) to be inaccurate. (Tr. 27–28.) Therefore, Ramey was concerned for the health and safety of the employees in that area. (Tr. 27.) Ramey believed that differential pressure readings would prove whether or not there was a problem with the data recording properly and show if the readings were out of compliance. (Tr. 28.) The lime kiln scrubber data is stored electronically. (Tr. 30.)

On May 11. 2020, Ramey also filed a grievance on behalf of the Union. (Jt. Exh. 3.) The grievance, number 935–04–20, was filed in part because Ramey believed that Respondent retaliated against the Union for negotiating for safer working conditions due to Covid. (Tr. 29.) In addition, he believed that Respondent was retaliating against the Union for requesting this information. (Tr. 29.)

On July 14, 2020, Ramey, Vincent, Van Meter, and Ward met at Respondent's facility regarding several third-step grievances. (Jt. Exh. 14, Tr. 35–36, 86.) Ramey requested several items of information at this meeting. (Tr. 36.) Among these was a renewed request for the lime kiln scrubber data.[4] (Tr. 36, 87.) Van Meter provided Respondent's written answer to the third-step grievances on September 24, 2020. (Jt. Exh. 8.) Van Meter's answer did not provide the lime kiln scrubber data. (Id.)

The Union filed the charge in this case on November 2, 2020, alleging, inter alia, that Respondent had failed to provide the lime kiln scrubber data. (GC Exh. 1(a).) On December 3, 2020, Van Meter addressed the Union's request in a letter. (Jt. Exh. 10.) Regarding the lime kiln scrubber data, Van Meter indicated that a superintendent had advised her that the differential pressure gauge had to be rescaled, and that she and Ward had shared this information with

[4] Van Meter did not testify about this meeting. Ward was not called as a witness at the hearing.

Ramey on May 11, 2020.[5] (Jt. Exh. 10.) She further denied that employees had been exposed to NCGs. (Jt. Exh. 10.) Van Meter stated that if the Union still wanted the lime kiln scrubber's differential pressure readings for November 19, 2019, to May 1, 2020, Ramey needed to provide, in writing, the basis of the relevance and/or necessity of the request. (Jt. Exh. 10.) Prior to this correspondence, the Union had never been asked to narrow its request for lime kiln scrubber data or provide the relevance of its request. (Tr. 41.)

On December 18, 2020, Ramey sent a letter to Van Meter regarding several of the Union's information requests. (Jt. Exh. 11.) Ramey repeated his request for the lime kiln scrubber data, stating that the information was necessary for grievance number 935–04–20, which was at the arbitration step, and he believed it would show an intentional safety violation by the company. (Jt. Exh. 11.) Ramey also stated that the requested data would show that Respondent was retaliating against employees for speaking out on safety violations. (Jt. Exh. 11.)

On December 21, 2020, Van Meter sent another letter to Ramey regarding the Union's information requests. (Jt. Exh. 12.) In her letter, Van Meter denied the Union's request for the lime kiln scrubber data, stating

> Your claim for the need and relevance of the requested information is unfounded . . . There is a vague reference in the grievance that the union will 'confront any retaliation by the company' and that 'NCG monitoring is particularly important,' but the grievance does not actually allege anything improper about NCG monitoring, nor does it actually allege that any particular employee has actually been retaliated against for reporting any safety concern, nor is Twin Rivers aware of any such instance. Therefore, the differential pressure data for the Lime Kiln Scrubber is wholly unnecessary for the processing of grievance 935-04-20. Merely alleging an entirely baseless claim of data manipulation and/or retaliation, with absolutely no facts or evidence in support of that claim, does not make a request for information necessary or relevant, and the company accordingly denies this request.

(Jt. Exh. 12, p. 1.)

Respondent's attorney provided the lime kiln scrubber data for the period November 1, 2019, to May 1, 2020, attached to an email dated December 29, 2020. (Jt. Exh. 13.) This correspondence satisfied the Union's May 11, 2020, request for the lime kiln scrubber data. (Tr. 45.)

C. Donald Darrough Grievance and Information Request

Donald Darrough, an employee of Respondent, was disciplined on June 17, 2020, as a result of an incident on June 8, 2020. (Jt. Exh. 4.) According to Respondent, Darrough was

[5] Ramey specifically denied that he had any such conversation with Van Meter on May 11, 2020. (Tr. 55–56.) I found Ramey to be a more credible witness than Van Meter for reasons stated elsewhere in this decision. Given Van Meter's vague and cursory testimony regarding her alleged conversation with Ramey, I reject her testimony on this point.

disciplined for cleaning the hot stock screen without having his personal lock on the equipment lockbox.[6] (Jt. Exh. 4.) Darrough also allegedly, "completed the lockout sheet incorrectly scratching through equipment . . . (sic)." (Jt. Exh. 4.) Darrough is, and was at the time of this incident, the Union's recording secretary. (Tr. 30.)

A meeting concerning this incident was held on June 16, 2020. (Tr. 31.) Present at the meeting were Ramey, Ward, and Van Meter. (Tr. 32.) During the meeting, Ward and Van Meter said that Darrough had scratched through some of the items on the lockout/tagout sheet and that this was unacceptable. (Tr. 32.) Ramey verbally requested the following information at this meeting: a copy of the Standard Operating Procedure (SOP) for unplugging the hot stock screen and the last four lockout sheets from maintenance performed on the same equipment.[7] (Tr. 32.) Ramey requested the lockout sheets to see if other employees had scratched out items on the sheets. (Tr. 32.) Ramey requested the SOP to see if Darrough had deviated from what he was supposed to do in performing maintenance on this piece of equipment. (Tr. 32–33.)

On June 17, 2020, Darrough was given a 3-day suspension as a result of the June 8 incident. (Jt. Exh. 4.) On June 26, 2020, the Union filed a grievance, number 935–06–20, on Darrough's behalf. (Jt. Exh. 5.)

On June 28, 2020, Ramey sent an email to Van Meter. (Jt. Exh. 6.) In his email, Ramey made a written request for the same information he had requested at the June 16 meeting: the last four lockout sheets used when unplugging the hot stock screen and the SOP for unplugging the hot stock screen. (Jt. Exh. 6.) Ramey further noted that Van Meter had committed to providing this information at the June 16 meeting, but had failed to do so. (Jt. Exh. 6.)

On June 30, 2020, Van Meter responded to Ramey regarding the Darrough grievance. (Jt. Exh. 7.) Respondent denied violating the contract as alleged in the grievance. (Jt. Exh. 7.) Van Meter indicated that Darrough had received refresher training regarding the lock out tag out procedure in November 2019 and had received training on cleaning out a plugged hot stock system in February 2016. (Jt. Exh. 7.) Van Meter further stated that Darrough violated the lockout/tagout procedure by failing to place his personal lock on the system and by incorrectly scratching things out on the lock out sheet. (Jt. Exh. 7.) Attached to the response were Darrough's November 2019 training records regarding the lockout/tagout procedure and his 2016 initial training records regarding flushing and restarting the hot stock system. (Jt. Exh. 7.) Van Meter did not provide the last four lock out tag out sheets or the SOP for unplugging the hot stock screen with her correspondence.

As indicated above, Ramey, Vincent, Van Meter, and Ward met on July 14, 2020, regarding several third-step grievances. (Jt. Exh. 14, Tr. 35–36, 86.) At that time, Ramey reiterated his requests for the last four lockout/tagout sheets and the SOP for unplugging the hot stock screen. (Tr. 36, 87–88.) Ramey hoped that the lockout/tagout sheets would show if Darrough's scratching through items on the sheet was an isolated incident. (Tr. 37.) The SOP would show if

[6] The hot stock screen is a piece of equipment that separates high quality fibers used for making paper from the unusable fibers. (Tr. 32.)

[7] Unplugging the hot stock screen is clearing the screens of debris that may have stopped the passage of raw material through them. (Tr. 33.)

Darrough had done what he was supposed to do in terms of the lockout/tagout procedures. (Tr. 37.) These documents would also help Ramey determine whether Darrough's grievance had merit or not. (Tr. 37.)

At the July 14 meeting, Ramey also requested information regarding whether Darrough had received refresher training. (Tr. 37.) Ramey requested this information because Ward had stated during the meeting that Respondent had spent 6 months revamping the way they did things in the pulp mill for the hot stock screen and other equipment. (Tr. 37.) Ramey testified, without contradiction, that when changes are made to the way equipment is run or the way employees carry out their duties, Respondent usually requires employees to review, learn, and make sure they are familiar with the new procedures (Tr. 39.) Van Meter and Ward promised to send information regarding Darrough's refresher training at this meeting. (Tr. 39.) Ward also indicated that it should not be difficult to obtain the SOP for the hot stock screen. (Tr. 88.)

Van Meter provided Respondent's third-step answer on September 24, 2020. (Jt. Exh. 8.) Van Meter indicated that the parties were seeking a mediator to help resolve several grievances, including Darrough's grievance. (Jt. Exh. 8.) Regarding Darrough's grievance, Van Meter stated, "Complaint on hold until they look at refresher training record." (Jt. Exh. 8.)

The Union responded to Respondent's third step answer with a letter attached to an email dated October 2, 2020. (Jt. Exh. 9.) Ramey denied stating that the Union would hold off on Darrough's grievance to review documents. (Jt. Exh. 9.) In addition, Ramey requested a copy of all lockout/tagout sheets from the pulp mill since July 1, 2020, and evidence of refresher training provided to Darrough regarding lockout procedures. (Jt. Exh .9.) Ramey stated that the refresher training information was necessary to decide the final direction of the grievance. (Jt. Exh. 9.) In addition, Ramey requested the additional lockout/tagout sheets because Respondent still had not provided him with the last four lockout/tagout sheets he had previously requested. (Tr. 40.) Ramey wanted to see how other employees filled out the lockout/tagout sheets and whether Darrough had been treated differently when he was disciplined. (Tr. 40.)

On November 2, 2020, the Union filed the charge in this case. (GC Exh. 1(a).) In its charge, the Union alleged that Respondent had, inter alia, failed to provide it with the following information: the last four lockout/tagout sheets used when unplugging the hot stock screen; the SOP for unplugging the hot stock screen; documentation showing that Darrough received refresher training on the hot stock screen, and; all lockout/tagout sheets from the pulp mill since July 1, 2020.

On December 3, 2020, Van Meter sent a letter to Ramey regarding his outstanding requests for information. (Jt. Exh. 10.) Van Meter attached the SOP for unplugging the hot stock screen to the letter. (Jt. Exh. 10.) In addition, Van Meter stated that there was no documentation regarding refresher training for Darrough. (Jt. Exh. 10.) She stated that Darrough had refused to sign the refresher training documentation for training conducted on July 22, 2020. (Jt. Exh. 10.)

In addition, Van Meter stated that the Union's request for all lockout/tagout sheets from the pulp mill since July 1, 2020, was a "voluminous request involving four (4) months' worth of daily lockout sheets for every single piece of equipment in the Pulp Mill." (Jt. Exh. 10.) Respondent did not understand the basis or need for such a broad request and asked Ramey to

provide, in writing, the basis of the relevance and/or necessity of his request, and any options for narrowing the request. (Jt. Exh.10.) Van Meter did not mention the Union's earlier request for the last four lockout/tagout sheets.

On December 18, 2020, Ramey sent a letter to Van Meter regarding the Union's information requests. (Jt. Exh. 11.) Ramey was satisfied with the SOP for unplugging the hot stock screen provided on December 3. (Jt. Exh. 11.) Ramey also renewed his request for Darrough's refresher training, noting that more than 5 months had passed since he first requested this information. (Jt. Exh. 11.) Ramey clarified that he was seeking evidence of refresher training provided to Darrough before he was reprimanded in June. (Jt. Exh.11.)

In addition, Ramey modified his request for all lockout/tagout sheets from the pulp mill. (Jt. Exh. 11.) He indicated that the Union was now only seeking lockout sheets for the pulp mill area for July 13, 2020, on the main pressure switch, July 22, 2020, for the hot stock area, and for the #2 washer stage on July 31, 2020. (Jt. Exh. 11.) This narrowed the information request to three sheets of paper. (Jt. Exh. 11.)

On December 21, 2020, Van Meter responded to Ramey with an email.[8] (Jt. Exhs. 12, 14.) Van Meter attached Darrough's training documents from 2016. (Jt. Exh. 12.) This information had been previously provided on June 30, 2020. (Jt. Exh. 7.) However, Van Meter did not attach any documents regarding any subsequent refresher training. (Tr. 43.) The Union concluded that the absence of any documentation meant that no such documentation existed. (Tr. 44-45.) In addition, the Union received the three lockout/tagout sheets requested in modified information request of December 18 and the last four lockout/tagout sheets it requested in June 2020. (Tr. 44.)

DISCUSSION AND ANALYSIS

A. Witness Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group,* 339 NLRB 303, 305 (2003); *Daikichi Sushi,* 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group,* 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi,* 335 NLRB at 622. Some of my credibility findings are incorporated into the findings of fact set forth above.

I found Alonzo Ramey to be a credible witness. He testified in a forthright and candid fashion. His testimony did not waver on cross-examination and was not controverted in any meaningful way by other evidence. Ramey candidly admitted that many things on cross examination, including that Darrough lined out steps on the lockout/tagout sheet and that he

[8] Although Van Meter's email is dated December 18, the parties stipulated that the date of the document is December 21, 2020. (Jt. Exh. 14.)

found no evidence that any employee was exposed to harmful levels of NCGs. He also conceded that he was unaware of the existence of any refresher training document for Darrough for the period between September 2019 and June 2020. Thus, I credit Ramey's testimony.

I also found Chad Vincent to be a credible witness. His brief testimony was given in an open and direct manner. He corroborated Ramey's testimony regarding the third-step meeting that occurred on July 14, 2020. His testimony did not waver on cross examination. Therefore, I credit Vincent's testimony.

I did not find credit much of Theresa Van Meter's testimony. Her testimony was contradicted by the record evidence. For example, on direct examination, she gave the following testimony

> Q. When Mr. Ramey requested [the lime kiln scrubber] data as set forth in Joint Exhibit 2, did you have any knowledge or belief about why he was requesting it?
>
> A. No, sir.

(Tr. 98.) However, this testimony was undermined by Joint Exhibit 2, in which Ramey stated:

> [Local Union] #13-935 has concerns about employees' exposure to NCGs from the lime kiln. Recent manipulation of instruments has compromised the reliability of the data. Therefore, this is an information request for the Lime Kiln Scrubber Data for the kiln's differential pressure readings from November 1, 2019 to May 1, 2020 . . .

(Jt. Exh. 2.)

Furthermore, Van Meter's testimony regarding an alleged conversation she had with Ramey regarding this request was vague. Van Meter testified that she met with Ward and a superintendent regarding the lime kiln scrubber data after receiving Ramey's information request. (Tr. 98.) She stated that the superintendent found that the parameters were set too high so that the alerts were not being read. (Tr. 99.) She went on to testify that she and Ward called Ramey into the office and, "told him that." (Tr. 99.) She did not recall Ramey's response, if any. (Tr. 99.) She then said, "the report had been sent and that was it." (Tr. 99.) Her lack of recall regarding Ramey's statements at such an important meeting was suspect. Given Ramey's better recall of significant events, I credit his testimony over that of Van Meter. Specifically, I do not credit Van Meter's testimony that she had a conversation on May 11, 2020, with Ward and Ramey about Ramey's lime kiln scrubber data request as set forth above.

Van Meter similarly did not recall other important information. Under cross examination, Van Meter was asked whether she communicated with the Union in any way about the information requests between October 2 and December 3, 2020. (Tr. 111.) Her response was, "Not that I recall." (Tr. 111.) She further did not recall if she asked for an extension of time to respond to the Union's information requests. (Tr. 111.) Likewise, she did not recall whether she notified the Union that Darrough had refused to sign a refresher training document in July 2020

at any time prior to December 3, 2020. (Tr. 112.) Given Van Meter's equivocal and inconsistent testimony, I credit Van Meter's testimony only when it is supported by other, more credible evidence, is inherently probable and uncontroverted, or acts as an admission against Respondent's interests.

B. Legal Standards Regarding Information Requests

In dealing with its employees' collective-bargaining representative, one of the things which employers must do, on request, is to provide information that is needed by a bargaining representative for the proper performance of its duties. *NLRB v. Acme Industrial Co*., 385 U.S. 432 (1967). Following an appropriate request, and limited only by considerations of relevancy, the obligation arises from the operation of the Act itself. *Ellsworth Sheet Metal*, 224 NLRB 1506 (1976). In each case, the inquiry is whether or not both parties meet their duty to deal in good faith under the particular facts of the case. *NLRB v. Truitt Mfg. Co*., 351 U.S. 149 (1956).

Information requests regarding bargaining unit employees' terms and conditions of employment are presumptively relevant and must be provided. *Whitesell Corp*., 352 NLRB 1196, 1197 (2008), adopted by a three-member Board, 355 NLRB 635, 649 (2010), enfd. 638 F.3d 883 (8th Cir. 2011); *Southern California Gas Co*., 344 NLRB 231, 235 (2005). If the requested information is not directly related to the bargaining unit, the information is not presumptively relevant, and the requesting party has the burden of establishing the relevance of the requested material. *Disneyland Park*, 350 NLRB 1256, 1257 (2007); *Earthgrains Co*., 349 NLRB 389 (2007).

Processing grievances is clearly a responsibility of a union, and an employer must provide information requested by the union for the purposes of handling grievances. *TRW, Inc*., 202 NLRB 729 (1973). The legal standard concerning just what information must be produced is whether or not there is "a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative." *Bohemia, Inc*., 272 NLRB 1128 (1984). The Board uses a broad, discovery-type standard in determining relevance in information requests and potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). The Board, in determining that information is producible, does not pass on the merits of a grievance underlying an information request. *W. L. Molding Co*., 272 NLRB 1239 (1984). If a pending grievance does exist, "an employer's duty to furnish information relevant to the processing of a grievance does not terminate when the grievance is taken to arbitration." *Lansing Automakers Federal Credit Union*, 355 NLRB 1345, 1353 (2010).

Absent evidence of justification, an unreasonable delay in furnishing relevant information is as much a violation of Section 8(a) (5) of the Act as a refusal to furnish the information at all. *PAE Aviation and Technical Services, LLC*., 366 NLRB No. 95, slip op. at 3 (2018). It is an employer's duty to furnish relevant information as promptly as possible, given the circumstances, as a union is entitled to the information at the time the information request is made. Id. In determining whether a party has failed to produce information in a timely manner, "the Board considers a variety of factors, including the nature of the information sought (including whether the requested information is time sensitive); the difficulty in obtaining it (including the

complexity and extent of the requested information); the amount of time the party takes to provide it; the reasons for the delay in providing it; and whether the party contemporaneously communicates these reasons to the requesting party." *General Drivers, Warehousemen & Helpers Local Union No. 89*, 365 NLRB No. 115, slip op. at 2 (2017). The analysis is an objective one, focusing not on whether the employer delayed in bad faith, but rather on whether it supplied the requested information in a reasonable time. *Management & Training Corp.*, 366 NLRB No. 134, slip op. at 3 (2018).

Even though an employer has not expressly refused to furnish the information, its failure to make a diligent effort to obtain or to provide the information reasonably promptly may be equated with a flat refusal. *Shaw's Supermarkets,* 339 NLRB 871, 875 (2003), citing *NLRB v. John C. Swift Co*., 124 NLRB 394 (1959), enfd. in part and denied in part 277 F.2d 641 (7th Cir. 1960). An employer has an affirmative obligation to make reasonable efforts to obtain information related to a pending grievance. *Public Service Co. of Colorado,* 301 NLRB 238, 246–247 (1991).

Although there is not a per se rule for what constitutes an unreasonable delay, the Board has found delays from 2 to 16 weeks to be unreasonable. See *Capitol Steel & Iron Co*., 317 NLRB 809 (1995) (2 weeks unreasonable); *Aeolian Corp*., 247 NLRB 1231, 1245 (1980) (3 weeks unreasonable); *Postal Service*, 308 NLRB 547, 551 (1992) (4 weeks unreasonable); *Postal Service*, 332 NLRB 635 (2000) (5 weeks unreasonable); *Linwood Care Center*, 367 NLRB No. 14, slip op. at 5 (2018) (6 weeks unreasonable); *Woodland Clinic*, 331 NLRB 735, 737 (2000) (7 weeks unreasonable); and *Regency Service Carts*, 345 NLRB 1286 (2005) (16 weeks unreasonable).

C. Respondent Violated the Act in Unreasonably Delaying Responding to the Union's Information Requests

The Union first requested the differential pressure readings for the lime kiln scrubber on May 11, 2020. This data is stored electronically. In his request, Ramey stated that his purpose in seeking this information was to address concerns about unit employees potentially being exposed to harmful gases. The health and safety of employees are terms and conditions of employment, and thus information concerning these matters is presumptively relevant. *Minnesota Mining & Mfg. Co.*, 261 NLRB 27, 29 (1982), enfd. sub nom. *Oil, Chemical & Atomic Workers Local 6–418 v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983). Thus, the lime kiln scrubber data is presumptively relevant as it relates to the safety and health of bargaining unit employees. In addition, this information was related to a pending grievance.

As the lime kiln scrubber data is presumptively relevant, the Union was not required to demonstrate the relevance of its information request. Instead, the information should have been furnished unless the employer presented additional facts or circumstances sufficient to rebut the presumption of relevance. *Colorado Symphony Assoc.,* 366 NLRB No. 60 (2018). In any event, the Union had amply and repeatedly demonstrated its need for the lime kiln scrubber data. Respondent did not provide the information requested by the Union on May 11, 2020, until its attorney did so December 29, 2020. This 7-month delay in providing this noncomplex and electronically stored data to the Union is inexcusable. Respondent did not offer any acceptable

reason justifying the delay. Therefore, I find that Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying providing the lime kiln scrubber data to the Union.

I do not accept Respondent's argument that its unlawful delay was occasioned by, "the manner in which the Union and [Respondent] communicated." (R. Brf. p. 10.) As stated above, I did not credit Van Meter's testimony that she somehow satisfied the request for the lime kiln scrubber data in May 2020. Ramey's uncontroverted testimony established that he repeated his request for the lime kiln scrubber data at a meeting in July 2020. The reiteration of this request was verified by the filing of the charge in November 2020 and by Van Meter herself in her December 3, 2020 letter. In fact, Van Meter mistakenly demanded that the Union establish the relevance of its request and then denied the request. As such, Respondent delayed providing this information for over seven months from the Union's initial request and over 5 months from Ramey's renewed request. I cannot, therefore, find that Respondent's delay was excused in any way.[9]

I further find that Respondent's delay in providing information related to the Donald Darrough grievance was unreasonable. On June 16, 2020, Ramey verbally requested the last four lockout/tagout sheets and the SOP for unplugging the hot stock screen. Ramey renewed his request for these items in writing on June 28, 2020. Despite these clear and simple requests, Respondent did not provide the SOP until December 3, 2020, and did not provide the four lockout/tagout sheets until December 21, 2020. This is a delay of over 5 months for the SOP and a delay of over 6 months for the four lockout/tagout sheets.

Both the SOP and lockout/tagout sheets were clearly relevant and necessary to the processing of Darrough's grievance. Information pertaining to bargaining unit employees is presumptively relevant and necessary and must be produced. *PAE Aviation & Technical Services, LLC,* 336 NLRB No. 95, slip op. at 3 (2018), citing *Allison Corp*., 330 NLRB 1363, 1367 (2000). It is well-settled that an employer is obligated to provide information that is relevant to a union's filing or processing of grievances. *PAE Aviation & Technical Services, LLC,* 366 NLRB No. 95, slip op. at 3 (2018), citing *Beth Abraham Health Services*, 332 NLRB 1234, 1234 (2000). The information sought in this case directly related to the grievance of a bargaining unit member and union officer. As such, it was presumptively relevant. Respondent offered no evidence that this information was complex or difficult to obtain. Nevertheless, it was not provided for many months after the Union's requests. The delay in providing the Union with the SOP for the hot stock screen and last 4 lockout/tagout sheets for the hot stock screen violated Section 8(a)(5) and (1) of the Act.

On July 20, 2020, the Union requested refresher training documents for Darrough. Ramey requested this information because Ward had mentioned that Respondent had changed its procedures for maintaining the hot stock screen and Ramey believed that employees would have been trained on such new procedures. Prior to Ramey's request, in June 2020, Respondent had provided Ramey with Darrough's initial training records from 2016 and another training in 2019. Subsequent to the request, in September 2020, Van Meter acknowledged that the Union needed to review Darrough's training records before proceeding with the grievance. Van Meter's next

[9] The Union was not required to repeat or renew its request. See *Postal Service,* 371 NLRB No. 7, slip op. at 3 (2021) ("A union generally is not required to repeat its information request . . .").

statement regarding this request came on December 3, 2020, when she mentioned that Darrough had refused to sign off on a refresher training document in July 2020, after he was disciplined. On December 21, 2020, Van Meter again sent the Union Darrough's 2016 training records. The Union clearly indicated that it was requesting refresher training information. Training received by Darrough after his discipline would not have been responsive to the Union's simple request.

Despite not being told, Ramey presumed that Respondent had no refresher training records for Darrough that predated his June 2020 discipline. Respondent never told the Union that it did not have any documents responsive to its request for refresher training records. Respondent had a duty to provide this presumptively relevant information or explain that no such information existed. A delay in advising a Union that information it requested does not exist violates the Act. *Graymont PA, Inc.,* 364 NLRB No. 37, slip op. at 10 (2016). See also *Endo Painting Service, Inc*., 360 NLRB 485, 486 (2014) (duty to bargain includes the duty "to timely disclose that requested information does not exist."). Therefore, I find Respondent's failure to timely advise the Union that refresher training information for Darrough did not exist violated Section 8(a)(5) and (1) of the Act.

Finally, on October 2, 2020, the Union requested all lockout/tagout sheets since July 2020. Ramey made this request because Respondent, at that time, still had not responded to his requests for the last four lockout/tagout sheets that he made in June and July 2020. Ramey needed this information to investigate Darrough's grievance, which was still pending, and to see how other lockouts were performed. A month later, on November 2, 2020, the Union filed the charge in the instant case.

On December 3, 2020, Van Meter advised Ramey that she did not understand his voluminous request for all lockout/tagout sheets since July. Van Meter's request for clarification came over two months after Ramey requested this information. She indicated that she did not understand the basis for such a broad request. On December 18, Ramey responded to Van Meter and narrowed his request to three specific lockout/tagout sheets. Van Meter provided these three lockout/tagout sheets on December 21, 2020, almost 3 months after Ramey's initial request.

I do not find Respondent's delay in raising an objection to the breadth of Ramey's request reasonable. Respondent asserted no reason why it took 2 months to raise an objection to Ramey's request. Van Meter did not request an extension to respond to the Union's request. Respondent did not provide any evidence that the filing of the charge underlying this case prevented it from providing the requested information to the Union. Furthermore, Respondent did not explain why any of this information was complex or difficult to gather. Respondent made no effort to adduce evidence as to why it took so long to gather the requested documents. As such, I find that Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in responding to the Union's October 2, 2020 information request for lockout/tagout sheets.

Respondent provided no explanation for its delays of three months to six months in providing information to the Union. Therefore, under the Board's standards as enunciated in *General Drivers, Warehousemen & Helpers Local Union No. 89*, 365 NLRB No. 115, slip op. at 2 (2017), and *Postal Service,* 371 NLRB No. 7 (2021), I find that Respondent violated Section

8(a)(5) and (1) of the Act by unreasonably delaying in providing the relevant and necessary information requested by the Union on May 11, June 16, July 14, and October 2, 2020.

D. Respondent's Affirmative Defenses and Argument Lack Merit

Respondent raised seven affirmative defenses in its answer to the complaint. It is well established that the burden of proving an affirmative defense lies with the party asserting it. *Marydale Products, Co., Inc.,* 133 NLRB 1232 (1961), and *Sage Development Co.*, 301 NLRB 1173, 1189 (1991). Respondent did not present any arguments or caselaw in its brief supporting its affirmative defenses. However, in finding that Respondent violated the Act, I have already addressed its defenses.

I specifically reject Respondent's argument that the General Counsel or Union must show that the Union was somehow harmed by its delay in providing requested information. Board precedent does not require a showing of prejudice or harm to the Union. *Alcoa Corp.,* 370 NLRB No. 107 (2021). Furthermore, the Union established that it needed the information requested herein to determine whether there was merit to the Darrough grievance and to address employee safety and health concerns. Therefore, Respondent's delays in providing the requested information violated the Act.

In addition, I reject Respondent's assertion that the COVID-19 pandemic in 2020 somehow excused its delays in Responding to the Union's information requests. Van Meter testified that several employees were working from home during the pandemic. She did not testify how long they worked from home. She further offered no evidence as to how the employees' working from home impacted Respondent's ability to gather requested information. By the time of Darrough's grievance meeting in June 2020, the parties met in person. Thus, at least Van Meter was working in the office. Also, significantly, Van Meter never raised the pandemic as a reason that Respondent could not gather the requested information to the Union. As such, I reject this belated defense.

Moreover, Respondent cites administrative law judge decisions in support of some of its arguments. See *United States Postal Service,* 2004 WL 167531 (2004) and *Airborne Freight Corp.,* 2003 WL 22532373 (2003). In the absence of relevant exceptions, judge's decisions have no precedential value. *Colorado Symphony Assoc*., 366 NLRB No. 122, slip op. at 1 fn. 3 (2018). Thus, Respondent cannot rely upon these decisions in support of its arguments.

In sum, I find that the General Counsel has established that Respondent violated Section 8(a)(5) and (1) of the Act, as alleged in the complaint.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, Local 13–935, is a labor organization within the meaning of

Section 2(5) of the Act.

3. By unreasonably delaying in providing the Union with information as requested on May 11, June 16, July 14, and October 2, 2020, that is relevant and necessary to the performance of its function as the exclusive collective-bargaining representative of Respondent's employees, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the National Labor Relations Act.

4. The unfair labor practices committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. More specifically, having found that Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, it shall be ordered to cease and desist from unreasonably delaying in providing the Union with information relevant and necessary to the performance of its function as the exclusive collective-bargaining representative of respondent's employees. Respondent will further be ordered to post and mail a notice to employees attached as the Appendix.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

Respondent, Twin Rivers Pine Bluff, LLC, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, Local 13–935, by unreasonably delaying in furnishing it with requested information that is relevant and necessary to the performance of its function as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit: All Production Employees.

(b) In any like or related manner interfering with, restraining, or coercing employees of the rights guaranteed them by Section 7 of the Act.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Pine Bluff, Arkansas, copies of the attached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 15 after being signed by the Respondent's authorized representative, shall be posted by the Respondent, and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 11, 2020.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 15, 2021

Melissa M. Olivero
Administrative Law Judge

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively with International Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers, Local 13–935 (the Union), by unreasonably delaying in furnishing it with requested information that is relevant and necessary to the performance of its function as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit: All Production Employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

TWIN RIVERS PINE BLUFF LLC

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

600 S. Maestri Place, 7th Floor, New Orleans, Louisiana 70130
(504) 321-9471, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/15-CA-268541 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (504) 321-9476.